

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

KOHEN DIALLO E. UHURU,  
Plaintiff,  
v.  
HANIEL SHEN, et al.,  
Defendants.

No. 2:23-cv-0068 KJM AC P

ORDER

Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge as provided by 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On June 21, 2023, the magistrate judge issued findings and recommendations, which were served on plaintiff and which contained notice to plaintiff that any objections to the findings and recommendations were to be filed within fourteen days. ECF No. 9. Plaintiff has filed objections to the findings and recommendations. ECF No. 10.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this court has conducted a *de novo* review of this case. Having reviewed the file, the court finds the findings and recommendations to be supported by the record and by the proper analysis.


Plaintiff objects to the findings and recommendations and argues the magistrate judge erred in finding he is not in imminent danger of serious physical injury. Objs. at 1–2, ECF

No. 10. As the magistrate judge notes, *see* F. & R. at 4, ECF No. 9, plaintiff's complaint includes allegations of incidents that occurred several months before plaintiff filed the instant action, *see* Compl. at 6, ECF No. 1. The availability of the "imminent danger" exception to the three strikes rule "turns on the conditions a prisoner faced at the time the complaint was filed, not at some earlier or later time." *Andrews v. Cervantes*, 493 F.3d 1047, 1053 (9th Cir. 2007). Here, the allegations of physical injury are about incidents that occurred at an earlier time. Moreover, plaintiff does not allege there is an ongoing danger such that there is an imminent danger. *See id.* at 1056–57 ("[A] prisoner who alleges that prison officials continue with a practice that has injured him or others similarly situated in the past will satisfy the 'ongoing danger' standard and meet the imminence prong of the three-strikes exception."). Here, the court agrees with the magistrate judge's finding that the exception to the three strikes rule does not apply.

Accordingly, IT IS HEREBY ORDERED that:

1. The findings and recommendations issued June 21, 2023 (ECF No. 9), are ADOPTED IN FULL;
2. Plaintiff's application to proceed in forma pauperis (ECF No. 2) is DENIED;
3. Within thirty days from the date of this order, plaintiff shall pay the filing fee in full prior to proceeding any further with this action; and
4. This matter is referred back to the magistrate judge for all further pretrial proceedings.

DATED: August 28, 2023.

  
\_\_\_\_\_  
CHIEF UNITED STATES DISTRICT JUDGE